

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 458 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements?No

2. To be referred to the Reporter or not?  
No

J

3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

No

5. Whether it is to be circulated to the Civil Judge?

No

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STATE OF GUJ.

Versus

MOTIBHAI CHHITABHAI MACHHI  
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Appearance:

Mr. L.R. Pujari, APP, for the appellant

Mr. Akshay H.Mehta for the respondents  
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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 21/11/97

#### ORAL JUDGEMENT

By means of filing this appeal under Section 378 of the Code of Criminal Procedure, 1973, the State of Gujarat has challenged judgment and order dated March 20, 1990, passed by the learned Judicial Magistrate (First Class), Jhagadia, District Bharuch, in Criminal Case No.505 of 1986, whereby, the respondents-accused came to be acquitted for the charges framed against them for the offences punishable under Sections 143, 147, 148, 149,326, 114 of the Indian Penal Code, and Section 135 of the Bombay Police Act.

As per the prosecution case, on October 20, 1985, at about 17.30 hours, the respondents had formed an unlawful assembly, and, armed with deadly weapons, entered into the agricultural fields of P.W.No.2, Kunjbihari Mangaldas, and caused injuries with deadly weapons to P.W.No.2, Kunjbihari Mangaldas, P.W. No.1, Champaklal, and P.W.No.7, Bharat Kunjbihari. As per the prosecution case, P.W. No.7, Bharat Kunj Bihari, ran away after receiving injuries from the field, and went to the house of P.W. No.3, Khumansinh, and narrated the incident. P.W. No.3, Khumansinh, thereafter, went in a tractor to lodge a complaint at Umalla Police Station. The said complaint was registered by Police Sub-Inspector, Himatsinh Mangalsinh Parmar, who was discharging his duties as PSI at the said police station. Thereafter, Police Sub-Inspector, Mr. Parmar, took over the investigation, went to the place of incident and recorded the complaint of P.W. No.1, Champaklal. PSI, Mr. Parmar, thereafter, sent the injured persons for treatment to the hospital. Panchanama of scene of offence was drawn in presence of the panchas. During the course of investigation, the respondents came to be arrested. The respondents shown their willingness to produce the weapons, which were used in the commission of

offences and, therefore, panchanama, under Section 27 of the Indian Evidence Act, was prepared in presence of two independent panchas. Deadly weapons came to be recovered by panchanama Exh.69. After completion of investigation, chargesheet came to be filed against the respondents for the offences as stated above in the court of the learned Judicial Magistrate, First Class, Jhagadia, which came to be registered as Criminal Case No.505 of 1996.

Charge (Exh.6) was framed against the respondents for the offences punishable under Sections 143, 147, 148, 149, 326, 114 of the Indian Penal Code, and Section 135 of the Bombay Police Act. The charge was read over and explained to the respondents. The respondents did not plead guilty to the charge and claimed to be tried. Therefore, the prosecution led oral as well documentary evidence against the respondents to substantiate the charge. The prosecution, in support of its case, examined P.W. No.1, Champakbhai Vrajlal Shah (Exh.27), P.W. No.2, Kunjbiharilal Mangaladas Mahant (Exh.54), P.W. No.3, Khumansinh Pratapsinh (Exh.65), P.W. No.4, Vishnubhai Chhitabhai Patel (Exh.67), P.W. No.5, Jehabhai Ranchhodbhai (Exh.70), P.W. No.6, Pravinsinh Kalyansinh Chauhan (Exh.72), P.W. No.7, Bharat Kunjbiharilal (Exh.74), P.W. No.8, Daudbhai Jinnabhai Malik (Exh.76), P.W. No.9, Mohmad Bhaikhan Malek (Exh.77), P.W. No.10, Dr. Manilal Maganlal Shah (Exh.81), P.W. No.11, Himatsinh Mangalsinh Parmar, Investigating Officer, (Exh.101). The prosecution has also produced documentary evidence, namely, First Information Report, lodged by Khumansinh, at Exh.66, First Information Report, lodged by Champaklal, at Exh.28, panchanama of scene of offence, injury certificates of Champaklal and Kunj Bihari, etc., in support of its case. After recording of evidence of prosecution witnesses was over, further statements of the respondents were recorded under Section 313 of the Code of Criminal Procedure, 1973. In their statements, the respondents denied the case of the prosecution. The defence of the respondents is that they were falsely involved in this case because of previous enmity and because respondent No.1 had lodged criminal complaint against the prosecution witnesses, namely, Daud Zinabhai and Mohmed Bhaikhan Malek.

On appreciation of the evidence led by the prosecution, the learned Judicial Magistrate acquitted the respondents by the impugned judgment, giving rise to the present appeal.

Mr. L.R. Pujari, learned Additional Public

Prosecutor, has taken me through the evidence of the prosecution. The learned APP submitted that the learned Magistrate has erred in not relying upon the evidence of three injured eye-witnesses. It is submitted that the evidence of three eye-witnesses is supported by other oral evidence and injury certificates produced by the prosecution. It is, further, submitted by Mr. Pujari that the respondents had formed unlawful assembly armed with deadly weapons and they were guilty of the offences with which they were charged, and the appeal should be allowed.

Mr. Aakshay H. Mehta, learned advocate appearing for the respondents, has submitted that the evidence of three eye-witnesses is full of contradictions and improvements. He has further submitted that, as per the prosecution case, the respondents were armed with deadly weapons, which were sharp cutting weapons. In spite this fact, no incised wounds were found by the Medical Officer and the medical certificates also do not indicate that incised wounds were caused by any 'sharp-cutting weapons'. It is, further, submitted by the learned advocate for the respondents that there is contradiction in the first information report lodged by the complainant Khumansinh and the complaint lodged by Champaklal. That, the prosecution witnesses have falsely involved the respondents in the incident because of the previous enmity. That, the conduct of the witnesses examined by the prosecution is unnatural and, therefore, no reliance can be placed on their evidence. It is, lastly, submitted by the learned advocate for the respondents that the learned Judicial Magistrate has given cogent and convincing reasons for acquitting the respondents and, therefore, this being acquittal appeal, no interference of this Court is called for, and the appeal deserves to be dismissed.

Submission of the learned Additional Public Prosecution that the learned Judicial Magistrate has erred in not relying upon the evidence of the injured eye witnesses, is devoid of any merit. Evidence of P.W. No.1, Champaklal, who is an injured witness, is full of contradictions and improvements, as compared to the evidence of P.W. No.7, Bharat Kunjbihari. P.W. No.2, Kunjbihari Mangaldas, who is another injured witness, has also made many improvements if compared to his earlier version before the Investigating Officer. It appears that, because of the previous enmity, the respondents were falsely involved in this case. There are material contradictions in the evidence of three injured witnesses as stated above. As per the prosecution case, the

respondents had given blows with sharp cutting weapons on the person of P.W. No.1, Champaklal, and P.W. No.2, Kunjbihari Mangaldas. In spite of this fact, no incised wounds were found on the person of these two eye-witnesses. As per the prosecution case, P.W. No.7, Bharat, also received serious injuries, but he had not taken any treatment. The prosecution witness, Mohmad, had also sustained injuries, but he had also not taken treatment before any Medical Officer, nor any certificate of injury was produced. Even Dr. Manilal (Exh.81) also admitted, in his oral evidence, that he did not notice any incised wounds on the person of P.W. No.1, Champaklal and P.W. No.2, Kunjbihari. The prosecution has also relied upon recovery panchanama of muddamal weapons, alleged to have been found from the possession of the respondents. But, this panchanama is not proved. No blood stain was found on the muddamal weapons. It should be stated that the panchanama of scene of offence also does not disclose presence of blood at the place of the incident. Conduct of P.W. No.7, Bharat Kunjbihari, who had sustained injuries during the course of incident, is unnatural. As per his evidence, he escaped and ran away from the field, and went to the house of P.W. No.3, Khumansinh, and narrated the incident to him. As per the oral testimony, he remained at the house of Khumansinh for the whole night. The unnatural conduct of Bharat Kunjbihari that he did not like to go to the field as his father Kunjbihari Mangaldas was seriously injured, shows that he is not witness of truth. The prosecution has tried to suppress the genesis of the incident. The oral evidence is inconsistent with the medical evidence produced on record. When genesis of the prosecution case is not clear, it is not possible to accept that the incident took place in the manner suggested by the injured witnesses. If that is the situation, it would be simply risky and hazardous to see the fate of as many as six accused persons belonging to the same family. In my opinion, the prosecution case is full of doubt and the benefit of doubt must go in favour of the respondents. Under the circumstances, it cannot be said that any error is committed by the learned Judicial Magistrate in acquitting the respondents of the offences with which they were charged.

This is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned

Judicial Magistrate who had an advantage of observing demeanour of witness. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Judicial Magistrate for acquitting the respondents. Suffice it to say that the learned Judicial Magistrate has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judicial Magistrate in order to convince me to take the view contrary to the one already taken by the learned Judicial Magistrate. Therefore, the acquittal appeal deserves to be rejected.

For the foregoing reasons, I do not find any substance in the appeal. The appeal, therefore, fails and is dismissed. Muddamal be destroyed in terms of the direction given by the learned Magistrate in the judgment.

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(swamy)